

P-421/M-87-596MODIFYING OFFER OF SETTLEMENT AND ADOPTING OFFER OF  
SETTLEMENT AS MODIFIED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of Northwestern Bell Telephone  
Company's Private Line Transport Services  
Tariff Filing

ISSUE DATE: January 4, 1989

DOCKET NO. P-421/M-87-596

ORDER MODIFYING OFFER OF  
SETTLEMENT AND ADOPTING OFFER  
OF SETTLEMENT AS MODIFIED

PROCEDURAL HISTORY

On November 26, 1986, the Minnesota Public Utilities Commission (Commission) issued its FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (November 26, 1986 Order) in In the Matter of a Proposed Filing by Northwestern Bell Telephone Company (NWB or the Company) to Change Its Schedule of Special Intrastate Access Charges and In the Matter of a Related Complaint Filed by AT&T Communications of the Midwest, Inc. (Docket No. P-421/M-86-53; P-442, P-421/C-85-202). In that Order, the Commission found that a unified private line and special access tariff would be an appropriate means of eliminating the competitive unfairness inherent in the current private line and special access rates. The Commission directed NWB to file a unified tariff no later than September 30, 1987.

On September 30, 1987, NWB filed a Private Line Transport Services (PLTS) tariff with the Commission. This filing provided a unified tariff structure for NWB's special access and private line services and was assigned Docket No. P-421/M-87-596.

On November 24, 1987, the Commission issued its ORDER SUSPENDING RATES AND EXTENDING PERIOD OF SUSPENSION. In that Order, the Commission suspended the proposed PLTS rates and granted NWB's request for a 90 day period for discussion by interested persons on the disputed issues in this proceeding.

On March 7, 1988, the Commission issued its ORDER GRANTING REQUEST FOR EXTENSION OF SUSPENSION PERIOD. In that Order, the Commission granted NWB's request for an additional 30 day extension of the suspension period.

On April 15, 1988, the Commission issued its SECOND ORDER GRANTING REQUEST FOR EXTENSION OF SUSPENSION PERIOD. NWB and several interested persons to the proceeding had submitted a letter to the Commission indicating they had reached a verbal settlement and requesting an additional 14 days to submit a written Offer of Settlement. In the April 15 Order, the Commission granted the request for an additional 15 days for submission of the written settlement and also required NWB to provide notice of this proceeding and the proposed settlement to its customers.

On April 22, 1988, an Offer of Settlement was submitted to the Commission by NWB, the Department of Public Service (DPS), the Utilities Division of the Office of the Attorney General (OAG), the Minnesota Business Utility Users Council (MBUUC), the Department of Administration (DOA), AT&T Communications of the Midwest, Inc. (AT&T), the Minnesota Independent Coalition (MIC), and Communities for Citizen Access (a group of foreign exchange service users).

In May 1988, NWB notified its customers of the PLTS tariff filing and the proposed Offer of Settlement. Customers were to submit comments to the Commission by July 1, 1988.

### STATEMENT OF THE ISSUE

The issue before the Commission is whether to accept the Offer of Settlement submitted in Northwestern Bell Telephone Company's Private Line Transport Services tariff filing.

### FINDINGS AND CONCLUSIONS

#### A. Summary of the Offer of Settlement

The Commission finds that the following main points were agreed to by interested persons to the Offer of Settlement. First, the tariff structure incorporated in the PLTS tariff for the consolidation of the private line and special access services was appropriate. Second, certain of the rates in the PLTS tariff as originally filed should be adjusted downward. With the agreed upon downward revision, NWB believed that the rates for services offered under the PLTS tariff would, in the aggregate, cover the costs NWB believed it would incur in the future provision of those services.

Third, the rules, regulations and other provisions of the PLTS tariff were appropriate. Fourth, the PLTS tariff, as modified by the Offer of Settlement, should be made effective June 1, 1989. Fifth, any user of PLT services that meets the criteria contained in the Information Distribution Service section of the PLTS tariff having 24 or more point-to-point circuits (instead of the 48 circuits under the PLTS as originally filed) may request and receive individual case base pricing for those services.

Sixth, if the Offer of Settlement was approved, NWB would not, on its own motion or initiative, request any further increase in PLTS rates to become effective any earlier than July 1, 1991.

Seventh, based on the PLTS tariff as filed and modified by the Offer of Settlement, NWB estimated that it would receive additional net revenue of \$2,365,788. NWB agreed to recalculate the estimates regarding revenue, repression, stimulation and cost savings using December 1988 demand quantities and provide those updated figures to the parties and the Commission by April 1, 1989. Any additional net revenue that NWB might obtain as a result of the approval and implementation of the Offer of Settlement would be used to reduce measured outward WATS and business touch-tone rates and NWB's carrier common line charge (CCLC).

Eighth, NWB agreed to continue in good faith to discuss with the DPS issues related to the PLTS costing methodology. Discussions would continue for six months following approval of the Settlement. Within 15 days of the conclusion of the six month period, NWB would submit an informational report to the Commission and the parties to the Settlement, on whether and how the costing methodology could be modified to more completely reflect the costing methodology prescribed by the Commission in NWB's last private line case, Docket No. P-421/M-86-508. Other interested persons would have 30 days to file comments with the Commission.

Ninth, in the event the Commission altered any portion of the Offer of Settlement, the Offer would become immediately voidable by any party.

Finally, NWB agreed to a further waiver of the application of the ten month rule during the period that the Commission took to accept or reject the Offer of Settlement.

#### B. Commission Approval of Private Line Transport Service Tariff Structure.

After review of the Offer of Settlement and the comments of interested persons, the Commission finds that the tariff structure in the PLTS tariff substantially achieves the Commission's directive in its November 26, 1987 Order to file a combined special access and private line tariff as "an appropriate means of eliminating the competitive unfairness inherent in the current private line and special access rates."

The Offer of Settlement provided for an effective date of June 1, 1989 for the Private Line Transport Services tariff. The Commission finds that a June 1, 1989 effective date is appropriate to provide NWB with the time required to make the transition from the separate private line and special access tariffs to the PLTS tariff. Further, any current customer of private line or special access services will have an opportunity to budget for any rate change occurring as a result of the PLTS tariff or seek an alternative to the PLTS rates. The Commission will therefore establish an effective date of June 1, 1989 for the PLTS tariff.

The Offer of Settlement also provided that NWB and the DPS would continue negotiations related to PLTS costing methodology. The Commission believes that continued negotiations between the DPS and NWB on the appropriate cost methodology would be beneficial and would facilitate Commission review of NWB's PLTS rates in the Company's next general rate case. Therefore, the Commission concurs with the terms of the Offer of Settlement related to further discussion on the PLTS costing methodology.

### C. Commission Modification of Settlement Terms.

The Commission finds that substantial evidence does not exist to support the Offer of Settlement imposing an increase on users of Private Line Transport Service and allocating that increase to other classes of service.

NWB's tariff filing included a proposal to increase rates and revenues for private line and special access services by a gross amount of \$9,568,304. To avoid any change in NWB's profitability, NWB proposed reducing its CCLC. Under the rates proposed in the Offer of Settlement, NWB has estimated that it would receive an additional \$2,365,788 in net revenues over existing private line and special access revenues. This proposed increase is based upon establishing price floors determined by the Company's cost study.

NWB's tariff filing also included a proposal to price Information Distribution Service (IDS) to customers with 48 or more direct routed circuits on an Individual Case Basis (ICB). The Company explained, both in response to a Commission staff information request and to Commission questions at the oral argument, that ICB pricing under the PLTS tariff is calculated using discounts off of the tariff rate based on quantity of circuits between two points and the length of the contract the customer elects. Discounts for the quantity of circuits and length of contract are cumulative. According to NWB, the discounted rate would not be set below the long run incremental cost of the service plus a pre-determined level of contribution. NWB has also indicated that it will provide the ICB option on a non-discriminatory basis to any and all users that qualify and that request services on an ICB pricing basis.

#### 1. Maintain Existing Level of Revenues

The Company's filing and the Offer of Settlement is premised upon maintaining revenue neutrality, whereby rate and revenue increases to the Private Line Transport Service class of service are offset by rate and revenue requirement reductions to other classes of service. The Commission finds that maintaining revenue neutrality is consistent with procedures for miscellaneous tariff filings, in that the information required for general increases to all of the Company's rates and revenues is not required for a miscellaneous tariff filing.

The Commission, however, finds that there is no substantial evidence to support rate or revenue requirement reductions to the three classes of service which the Offer of Settlement has selected for this purpose--business touch-tone, the carrier common line charge and measured outward WATS services.

The first service selected for reductions to rates and revenue requirement was the CCLC. The Commission finds that when the PLTS tariff was filed, NWB's CCLC was \$0.0617. The CCLC has been reduced twice since that time, once in the Department of Defense petition for investigation, Docket No. P-421/CI-86-354, and once in the intraLATA toll access compensation proceeding, Docket No. P-999/CI-85-582 (the "582" docket). Currently, NWB's CCLC is at \$0.0438 for originating minutes of use and \$0.0542 for terminating minutes of use.

In the September 30, 1987 PLTS filing, NWB had proposed to apply all of the proposed revenue

increase as an offset to its CCLC. The reasons cited in testimony accompanying the filing were the range of prices and the direction of price changes taking place in other states and in the interstate jurisdiction, informal customer comments and a Switched Access market study performed by Dr. Frank Alessio in 1986. As described above, the trend for NWB's Minnesota intrastate CCLC has been downward as a result of other proceedings which have independently examined the need and desirability of reductions in the CCLC.

These reasons do not support a reduction in the carrier common line charge in this proceeding. Reductions which have occurred at the interstate level and in other jurisdictions are based on economic and other circumstances which have been determined to be relevant in those cases. Without examining the factors which supported the reductions in those particular instances, the mere fact the CCLC has been reduced cannot aid the Commission in determining whether the level of the CCLC is appropriate in Minnesota. For example, the reductions in the CCLC at the interstate level have been the result of FCC action to increase the federal access end user charge. Minnesota intrastate end user access charges do not exist. Such a reduction can therefore have no relationship to the issue before the Commission in this proceeding. The Commission also finds that in the "582" docket, the market study conducted by Dr. Alessio was rejected by the Commission. Consequently, these factors cited as reasons for reducing the CCLC are not relevant.

The second service identified for a rate reduction under the Offer of Settlement was business touch-tone rates. NWB explained that the rates for this service should be reduced because it is used by business customers, is above cost, and is subject to competition in the marketplace.

The Commission finds that it would not be appropriate to reduce business touch-tone rates without a corresponding decrease in residential touch-tone rates. Touch-tone rates were most recently reviewed in NWB's last general rate case (Docket No. P-421/GR-83-600). In that case, the Commission stated that "since touch-tone service is an adjunct to local exchange service, the Commission believes there should be some relationship between rates for local exchange and touch-tone services." Reducing business touch-tone rates without a corresponding reduction in residential touch-tone rates would alter the relationship between rates for local exchange and touch-tone services established in NWB's last general rate case without a thorough review of the costs and rates for those services.

Finally, NWB had indicated that business touch-tone rates should be reduced because they are priced above cost and are subject to competition. The Commission finds that residential touch-tone rates are also priced above cost and face the same competition identified by NWB (the availability of push button equipment without the customer having to subscribe to touch-tone service).

The last service identified for a rate reduction under the Offer of Settlement was measured outward WATS. The Commission finds that current rates for measured outward WATS were approved in Docket No. P-442, P-421/CI-84-454. In that proceeding, the Commission approved the measured WATS rates proposed by NWB. However, in its June 25, 1985 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AFTER INVESTIGATION in Docket P-442, 421/CI-84-454, the Commission directed NWB to file specific information regarding WATS in the Company's next general rate case. The Commission finds that it would be inappropriate to reduce measured outward WATS rates without relevant cost information to substantiate the proposed rates.

Since substantial evidence does not exist which supports the Offer of Settlement's reduction of revenue requirements or rates, the Commission would either be required to approve the rate and revenue increase and abandon the principle of revenue neutrality or allocate the increases to other classes of service. The Commission finds that there is no reason to abandon the principle of revenue neutrality in this case. While the Commission does not categorically reject the concept that rate and revenue increases may not be combined with reductions to rates and revenue requirement to maintain revenue neutrality in miscellaneous tariff filings, these revenue shifts should be supported by substantial evidence of cost and non-cost reasons for doing so. Without substantial evidence showing cost or non-cost reasons for the reductions in rates proposed by the Offer of Settlement, the Commission will modify the Offer of Settlement to exclude that provision.

The Commission also finds that the Offer of Settlement is not supported by substantial evidence of non-cost factors to warrant the increase in rates to PLTS customers. Non-cost factors include the disruptiveness of an increase, revenue stability, affordability, the ability to pass costs on to others, and the ability to decrease the cost of an increase through tax deductions. The Commission finds that the Offer of Settlement PLTS rates proposed do not provide revenue stability for PLTS services. NWB's tariff filing and the Offer of Settlement was made to increase revenues not maintain revenue stability. Superintendent Phillip Sanders of the Communications Services and Maintenance Division of the City of St. Paul Police Department, representing municipal users of private line service, argued before the Commission that the proposed PLTS rates would be disruptive and were not affordable.

The Commission also finds that there is no substantial evidence of cost factors to support the Offer of Settlement. The cost study which was used to support the minimum Individual Customer Based rates in the Offer of Settlement was the same study rejected by the Commission in Docket No. P-421/M-86-508. The Company and the Department have still not agreed on significant aspects of the study which were recommended by the Commission in the Commission's order.

Consequently, the Commission rejects NWB's proposal and the Offer of Settlement terms which require an increase in revenues for PLTS and a reduction in rates for the other classes of service as proposed. The Commission will accordingly prescribe rates under the restructured PLTS which maintain revenue neutrality, as far as practicable, for existing private line and special access services. To ensure that the Company recovers the same level of revenues under the PLTS tariff as it does under the current private line and special access tariffs, the Commission will direct NWB to calculate the ratio of total revenues from special access and private line services to total proposed revenues from PLT services under the rates proposed in the Offer of Settlement. NWB shall then apply this ratio to each rate element in the PLTS tariff proposed under the Offer of Settlement to determine the appropriate rates. Estimates regarding revenue, repression, stimulation and cost savings shall be recalculated, using the same methodology required by the Offer of Settlement, and using December 1988 demand quantities. The estimates shall be provided by NWB to the Commission and interested persons by April 1, 1989.

## 2. Individual Case Base Pricing

The Commission finds that the ICB pricing methodology described by NWB for use in pricing Information Distribution Services having 24 or more point-to-point circuits differs from the usual

connotation of ICB pricing. ICB pricing has been equated with detariffing of a particular service and has been approved in prior cases in order to provide flexibility in pricing a competitive service. Unlike these detariffed services, the provision of ICB PLT services are to be set according to formula discounts subject to upward adjustment to the minimum set by the cost study where the discount results in rates below those costs. Therefore, this proposal is more a customized package of standardized discounts, not usual individual case based pricing.

The Commission finds that the proposal to set volume discounts for Information Distribution Services according to the discount schedules submitted in support of the tariff is supported by substantial evidence and is just and reasonable. The Commission also finds that, to ensure the Company prices the service in a non-discriminatory manner, the list of discounts should be tariffed. Because, as NWB explained, the discounts are standard, i.e. customers having the same quantity of circuits and the same length of contract receive the same discount, inclusion of a schedule of the discounts in the PLTS tariff would be appropriate and will be ordered by the Commission.

Since the Commission is modifying the Offer of Settlement to keep PLTS revenues at existing levels for special access and private line rates, there is no reason to adjust the discounts to minimum floor levels set by the cost study. If the cost study is not substantial evidence to support the revenue increase, it is not substantial evidence to support the minimum cost floors.

The Commission also finds that it is not necessary to set a minimum floor based on the cost study to prevent anticompetitive effects. The Commission's purpose in requiring a combined special access/private line tariff was to eliminate anticompetitive discrimination. However, the Commission finds that standard discounts for both AT&T and NWB customers alike should be sufficient to protect competition.

While there is disagreement among the parties, particularly between NWB and the DPS, regarding the cost methodology employed by NWB to establish minimum rates to customers on an ICB contract basis, the Offer of Settlement provides that NWB and the DPS would continue discussions related to the PLTS costing methodology to smooth out differences. At oral argument, the DPS and NWB indicated that they continued to have differences in methodology. The Commission believes that continued discussion between the DPS and NWB on the cost methodology employed by NWB would be beneficial. Resolution of an incremental costing method would facilitate Commission review of NWB's PLTS rates in the Company's next general rate case. Therefore, the Commission concurs with the terms of the Offer of Settlement related to further discussions on the costing methodology.

### ORDER

1. The Offer of Settlement submitted by interested persons to Northwestern Bell Telephone Company's Private Line Transport Services Tariff filing is modified as specified in this decision and, as modified, the Offer of Settlement is approved.
2. The Company shall file estimates regarding revenue, repression, stimulation and cost savings



from the approved rates using December 1988 demand quantities and the methodology used in the Offer of Settlement. These estimates shall be submitted to the Commission, the Department of Public Service and other interested persons by April 1, 1989.

3. Northwestern Bell Telephone Company shall file tariff pages reflecting the individual cost base pricing discounts for Information Distribution Services.
4. Within 30 days of the service date of this Order, Northwestern Bell Telephone Company shall file with the Commission and all interested persons revised tariff pages reflecting the rates approved in this Order and clarifying language, as discussed above, regarding the discounts for Information Distribution Services.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen  
Executive Secretary

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